

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : SUIT FOR PERMANENT INJUNCTION

RFA No.399-403/2006

Reserved on : 11th September, 2008

Date of decision: 5th December, 2008

Shanti Devi and Ors. ...

Through: Appellant
Mr. Som Dutt Sharma, Adv.

Versus

Rakesh Kumar Singhal and Ors.

Through: Respondent
Mr. B.P. Gupta, Adv.

CORAM :-

THE HON'BLE MR.JUSTICE PRADEEP NANDRAJOG

THE HON'BLE MR. JUSTICE J.R. MIDHA

J.R. MIDHA, J.

1. The appellants have assailed the judgment dated 12th December, 2005 passed by the learned Additional District Judge whereby the suit for permanent and mandatory injunction filed by the appellants has been dismissed.

2. The appellants and the respondents are cousins being heirs of two brothers, namely, late Narain Dutt and Late Tara Chand Singhal. The appellants and the respondents have half share each in suit property bearing No.327, Prakash Street, Teliwara, Delhi 110 006. The appellants are in occupation of the first floor and half of second floor, whereas the respondents are in occupation of the ground floor and the other half of the second floor of the suit property.

3. Respondent No.1 is running the business of tailoring under the name and style of M/s. Singhal Brothers, Tailors and Drapers, Gentswear, from the ground floor of the suit property.

4. The appellants filed a suit for mandatory and permanent injunction against the respondents seeking mandatory injunction against the respondents to stop the running of machines in the suit property and further not to use any part of the suit property for any purpose other than residence and for permanent injunction for restraining the respondents from causing any damage to the suit property or creating any nuisance or pollution therein.

5. The suit was based on the allegation that respondent No.1 had installed machinery for the purpose of making button holes, buttons and overlocks and for preparing coat collar and cuff-fusing which caused foul smell. It was further alleged that respondent No.1 has also installed a peeco machine. It was alleged that the said machines run on powerful motor which cause vibrations and cracks have developed in the suit property. The appellants further alleged that the respondents were using suit property for commercial and industrial purpose and were causing noise pollution detrimental to the health of the appellants, especially appellant No.1 who is old and infirm. It was alleged that the respondents had employed eight employees who caused air pollution due to smoking and uncivilized manner of use of the urinals which created health hazard.

6. The respondents contested the suit on various grounds, inter alia, that they were using the ground floor of the suit property for tailoring purpose for the last 15 years before the filing of the suit without any objection from the appellants. The respondents stated that they have commercial electricity connection from DESU. It was alleged that the suit was filed as a counter blast and in retaliation to another suit bearing No.2568/1995 filed by the respondents against appellants in which a status quo order with respect to the easement rights of the respondents was passed by the Court in respect of iron jall on the first floor of the suit property.

7. At the trial, appellant No.2, Sushil Singhal, appeared in the witness box as PW-1 and proved the site plan, Ex.P-6. He deposed that the respondent installed the machines in October, 1995 and operates them from 8.00 AM to 10.00 PM due to which the building had developed cracks. PW-1 proved the photographs, Ex.P-1, Ex.P-1A, Ex.P-7, Ex.P-8 and Ex.P-9. He further deposed that appellant No.1 was aged 81 at that time and was suffering from multiple deceases and was suffering from noise pollution caused by the running of the machines. The running of the machines also disturbed the studies of the children. PW-1 further deposed that employees of respondent caused noise pollution due to smoke and uncivilized use of the toilets.

8. The respondent examined four witnesses. Respondent No.1 appeared in the witness box as DW-1 and proved the site plan Ex.DW-1/1. DW-1 deposed that the suit property had been partitioned between the appellants and the respondents and he proved letter Ex.DW-1/2 written by appellant No.1 to MCD acknowledging the factum of partition. DW-1 further deposed that the entire Teliwara area was used for residential-cum-commercial purposes and he proved the site plan Ex.DW-1/3 showing commercial activities in the area. He also gave the numbers of the adjoining properties bearing No.253, 254, 257 and 264 Prakash Gali, Teliwara area where business activities were being carried on. He deposed that he was running a small tailoring unit on the ground floor on two table mounted machines with H.P. motor which do not cause any pollution. There had been no complaint from any neighbour. The tailoring business was permitted by MCD and licence fee receipt upto 2002 was proved as Ex.DW-1/4. DW-1 deposed that he was running the tailoring business with KW. commercial connection since 1989 and the same was assessed to Income Tax since 1989. The Income Tax assessment order for the Assessment Year 1989-90 was proved as DW-1/5. He stated that he had only one

helper and the business was run only during permitted hours i.e. 9.30 AM to 7.30 PM. He proved the order passed in suit No.2568/1995 instituted by him against the appellants as Ex.DW-1/6 in which there had been a status quo order, in retaliation to which the appellants had filed the present suit.

9. DW-2 is the neighbour of the parties who deposed that the respondent No.1 installed only two table mounted machines running on H.P. motor and the operation of the said machines do not cause any nuisance or pollution. He further deposed that no neighbour ever complained about the nuisance or pollution or disturbance of any nature and the entire Teliwara area was used for residential-cum-commercial purpose. 10. DW-3 is the immediate neighbour running a halwai shop in the neighbourhood. DW-4 also stays in the neighbourhood of the parties. Both DW-3 and DW-4 corroborated the testimony of DW-2. 11. The appellants did not lead any evidence in rebuttal. 12. From the evidence on record of the learned trial court, it is clear that the suit property is situated in residential-cum-commercial area. DW-1 has proved the site plan Ex.DW-1/3 showing the commercial activities being carried on in the area. 13. Respondent No.1 is carrying on the business of tailoring from the ground floor of the suit property and has installed two table mounted machines with HP. motor for stitching of cloths and making kaj since 1989. Respondent No.1 is also paying licence fees for running the trade to the Municipal Corporation, duly proved vide receipt Ex.DW-1/4 dated 23rd August, 2001. Respondent No.1 is assessed to Income Tax since 1989 which has been sufficiently proved by the assessment order Ex.DW.1/5. 14. The respondents are admittedly the lawful owners in possession of the ground floor of the suit property. The suit property is located in a residential-cum-commercial area and, therefore, the respondents are entitled to peacefully carry on the commercial activities therein. As per the evidence led by the respondents to which there is no rebuttal, respondent, No.1 is carrying on tailoring business with the help of two table mounted machines with H.P. motor which cannot be said to cause any vibration sufficient to cause cracks or any noise pollution. The photographs proved by the appellants do not prove that the cracks have developed due to the vibrations from the machines. No neighbour has any complaint against the respondents. Rather three neighbours appeared in the witness box and deposed in favour of the respondents to which there is no rebuttal. No expert evidence whatsoever has been led by the appellants to prove noise pollution, magnitude of vibration and the damage to the property.

15. It also stands proved that the respondents are running the business since 1989 and the appellants have made false and incorrect statement on oath that respondent No.1 installed the machines in 1995 with a view to show the justification of filing the suit in 1997.

16. We agree with the findings of the learned trial court that no case for mandatory and permanent injunction has been made out by the appellants. The appellants cannot take away the right of the respondent to peacefully carry on business activities in their property.

17. The appeal is wholly misconceived.

18. We dismiss this appeal with costs.

Sd./-

J.R. MIDHA,J

Sd./-

PRADEEP NANDRAJOG,J

5th December, 2008